

PATENT APPLICATION

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re application of

Docket No: A8644

Lynh NGUYEN

Appln. No.: 09/750,475

Group Art Unit: 2152

Confirmation No.: 7832

Examiner: Dohm CHANKONG

Filed: December 28, 2000

For: DATA SOURCE INTERFACE ENHANCED ERROR RECOVERY

REPLY BRIEF PURSUANT TO 37 C.F.R. § 41.41

MAIL STOP APPEAL BRIEF - PATENTS

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

In accordance with the provisions of 37 C.F.R. § 41.41, Appellant respectfully submits this Reply Brief in response to the Examiner's Answer dated September 26, 2007. Entry of this Reply Brief is respectfully requested.

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STATUS OF CLAIMS

Claims 1-22 are the claims pending in the present application and stand finally rejected.

Claims 1-22 are the claims on appeal herein.

Claims 1-19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Polizzi et al. (U.S. Publication 2002/0023158, hereinafter “Polizzi”) in view of Guenthner et al. (U.S. Patent 5,134,588, hereinafter “Guenthner”).

Claims 20-22 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Polizzi and Guenthner in view of Brendel et al., (U.S. Patent 5,774,660, hereinafter “Brendel”).

Claims 1-5, 8-12 and 15-19 were previously rejected under 35 U.S.C. § 103(a) as being unpatentable over Polizzi in view of Mastors et al. (U.S. Patent No. 5,862,021; hereinafter “Mastors”). However, the Examiner’s Answer indicates that the rejection has been withdrawn.

No other grounds of rejection or objection is currently pending.

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1. Whether claims 1-19 are unpatentable under 35 U.S.C. § 103(a) over Polizzi in view of Guenthner.
2. Whether claims 20-22 are unpatentable under 35 U.S.C. § 103(a) over Polizzi and Guenthner in view of Brendel.

ARGUMENT

In response to the Appeal Brief filed July 11, 2007, the Examiner has withdrawn the rejection of claims 1-5, 8-12 and 15-19 under 35 U.S.C. § 103(a) as being unpatentable over Polizzi in view of Mastors.

However, the Examiner maintains that claims 1-19 are unpatentable under 35 U.S.C. § 103(a) over Polizzi in view of Guenthner, and that claims 20-22 are unpatentable under 35 U.S.C. § 103(a) over Polizzi and Guenthner in view of Brendel. Applicant respectfully disagrees, and now responds to the new points raised by the Examiner in the Examiner's Answer.

1. Claims 1-19 are patentable under 35 U.S.C. § 103(a) over Polizzi in view of Guenthner

Claim 1, for example, requires:

“detecting unavailability of the data source in response to an initial request for the data source by the remote application;
dynamically detecting availability of the data source in response to a subsequent request for the data source; and
re-connecting the data source to the remote application in response to the subsequent request.”

The Examiner acknowledges that Polizzi fails to teach or suggest all the limitations of claim 1, and instead relies on Guenthner. Specifically, the Examiner asserts that Guenthner discloses the claimed feature of “dynamically detecting availability of the data source in response to a subsequent request for the data source”. As noted by the Examiner, Guenthner

discloses marking unavailable servers as “Bad” (col. 9, lines 19-24). However, the Examiner then incorrectly asserts that Guenthner discloses a client browser attempting to reconnect to “Bad” servers *if a client has supplied an additional request* (Examiner’s Answer, page 8, paragraph 3). Guenthner discloses that to keep from continuously attempting to connect to a bad server, “the browser ‘marks’ the entry as ‘Bad’ and **avoids** using it” (col. 9, lines 21-24; emphasis added). Guenthner discloses that client requests are instead sent to another server on the list of primary/backup servers (col. 9, lines 35-37). Guenthner also discloses that “a client retries entries that were marked as ‘Bad’ at a fairly frequent interval (at least once an hour) (so long as the client is still making requests, of course)” (col. 9, lines 28-31). Guenthner’s disclosure is quite different than the Examiner’s interpretation. Guenthner explicitly teaches to avoid using a “Bad” server, and therefore, according to Guenthner, so long as a client is making requests, those requests are serviced by a server that is not marked as “Bad”.

Additionally, so long as the client is making requests, the “Bad” servers are retried at a set interval (i.e. at least once an hour), where retrying the “Bad” servers may be performed separately and/or concurrently with servicing client requests. Hence, Guenthner retries a “Bad” server at a fairly frequent time interval (i.e. at least once an hour) and not in response to a subsequent request for the data source as required by the claim. Guenthner does not teach or suggest attempting to reconnect to “Bad” servers *if a client has supplied an additional request*, as asserted by the Examiner, but instead discloses attempting to reconnect to “Bad” servers *while a client is still making requests* (col. 9, lines 28-31).

Furthermore, even if Guenthner's statement of the retries being made "so long as the client is making requests" is deemed to disclose sending the retries "in response to a subsequent request," since Guenthner teaches against those retries being for "the data source," namely, the same data source to which the initial request was sent (i.e. the "Bad" server), Guenthner does not teach or suggest the claimed limitation. As recited in claim 1, the unavailability of a data source is detected in response to an initial request for that data source, and availability of the data source is detected in response to a subsequent request for the same data source that was detected as being unavailable.

The Examiner continues to assert that "essentially, a server that is on the "Bad" list represents a server that had not responded to an initial attempt but is marked as a server that will be reconnected to once the client detects that the server is available 'so long as the client is still making requests' to that server." (Examiner's Answer, paragraph bridging page 8 and 9). This assertion by the Examiner is in direct contrast with Guenthner's teachings. The Examiner asserts that a client reconnects to a "Bad" server so long as the client is making requests to the "Bad" server. However, as noted above, Guenthner explicitly teaches to **avoid** using a "Bad" server, and teaches against a client making requests to a "Bad" server. Instead, Guenthner discloses that client requests are sent to another server on the list of primary/backup servers (col. 9, lines 35-37).

In light of the discussion above, since neither Polizzi nor Guenthner, alone or in combination, teach all the limitations of claim 1, in particular, the claimed limitation of

“dynamically detecting availability of the data source in response to a subsequent request for the data source,” the rejection of the claims should be withdrawn.

Independent claims 8 and 15 also recite dynamically detecting availability of a data source with similar limitations as in claim 1. Accordingly, these claims are also patentable over Polizzi in view of Guenthner. Claims 2-7, 9-14 and 16-19 depend from one of these independent claims and therefore are patentable over Polizzi in view of Guenthner for at least the same reasons.

2. Claims 20-22 are patentable under 35 U.S.C. § 103(a) over Polizzi and Guenthner in view of Brendel

Applicant notes that claim 20 is dependent on claim 1. Accordingly, the subsequent communications recited in claim 20 include the communications claimed in claim 1. Claim 1 recites, *inter alia*, “dynamically detecting availability of the data source in response to a subsequent request for the data source”. The claimed “subsequent request for a data source” is a subsequent communication. Therefore the scope of claim 20 includes subsequent communication to a data source among other communication.

However, in the Examiner’s Answer, the Examiner unreasonably asserts that the claimed limitation of “subsequent requests for the data source” does not mandate the interpretation of subsequent communication (i.e. requests) to the data source (Examiner’s Answer, page 10, paragraph 2). Clearly, a request for a data source must be communicated to the data source, and therefore is a subsequent communication.

Brendel merely discloses data transmitted back to client browsers bypassing a load-balancer. However, Brendel maintains that incoming traffic is routed through the load balancer. According to Brendel, the claimed subsequent communication of requests for a data source would still be routed through the load balancer. As such, Brendel does not teach or suggest connecting directly the interface module and the port module for communicating independently from the connection manager in subsequent communications as claimed.

Guenthner fails to address the above noted deficiencies with respect to Brendel.

Accordingly, claim 21 is patentable over Polizzi and Guenthner in view of Brendel.

Claims 21 and 22 recite similar subject matter with respect to claim 20, and claims 8 and 15, on which claims 21 and 22 depend, respectively, recite “a subsequent request for the data source.” Accordingly, claims 21 and 22 are patentable over Polizzi and Guenthner in view of Brendel.

REPLY BRIEF UNDER 37 C.F.R. § 41.41
U.S. Application No.: 09/750,475

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CONCLUSION

For the above reasons as well as the reasons set forth in Appeal Brief, Appellant respectfully requests that the Board reverse the Examiner's rejections of all claims on Appeal. An early and favorable decision on the merits of this Appeal is respectfully requested.

Respectfully submitted,



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